

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF FIRE	)	
FIGHTERS, LOCAL 2543,	)	
	)	Public Case No. UC 2000-019
Petitioner,	)	(Cross Reference No. R 1977-001,
	)	UC 1979-015, R 1981-012,
v.	)	UC 1981-029, TA 1996-033, and
	)	UC 1997-009)
POPLAR BLUFF FIRE DEPARTMENT,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 1994. The matter before the State Board of Mediation arises from the filing by the International Association of Fire Fighters, Local 2543 (hereinafter referred to as the Union) of a petition for clarification of a bargaining unit established by a previous decision of the State Board of Mediation. The respondent in this case is the Poplar Bluff Fire Department (hereinafter referred to as the Department). In its petition the Union sought to include in the bargaining unit Captains and Shift Commanders. The Department maintained that Captains and Shift Commanders were supervisors and should not be included in the bargaining unit.

A hearing on this matter was held on February 1, 2000, in Poplar Bluff, Missouri, at which representatives of the Union and the Department were present. The case was heard by State Board of Mediation Chairman John Birch, Employee Member Patrick Hickey, and Employer Member Lois Vander Waerdt. At the hearing, the parties were given full opportunity to present evidence and make their arguments. During the hearing, the Union orally amended its petition to reflect that it was no longer seeking to represent the Shift Commanders. Furthermore, evidence was presented during the hearing indicating that, subsequent to the

Board's certification of the Union in 1978, the Department had undergone reorganization and bargaining unit employees had been reclassified. The Union requested that the Board take official notice of the past attempts by the Union to clarify the bargaining unit. At the close of taking evidence, the Union moved to further amend its petition to clarify the bargaining unit to read "all Firefighters and Captains, excluding Shift Commanders, Assistant Chief and the Chief." The Department conceded the need for some clarification of the bargaining unit, but continued to object to the inclusion of the Captains in the bargaining unit. The Chairman requested that both parties brief the issue. The parties did file briefs in this matter. After a careful review of the evidence and the arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

In *International Association of Fire Fighters, Local No. 2543 v. City of Poplar Bluff, Missouri*, Case No. 77-001 (SBM 1978) the Union asked the Board to decide the appropriateness of a unit consisting of all of the employees of the Poplar Bluff Fire Department, excluding the positions of Fire Chief, Assistant Fire Chief, Arson Investigator, and Mechanic. At that time, the Poplar Bluff Fire Department included the following positions: one Fire Chief, one Assistant Fire Chief, one Arson Investigator, one Mechanic, three Captains, six Lieutenants, nine Drivers, three Assistant Drivers, and six Hosemen. *Id.* at 2. On January 17, 1978, the Board entered its decision in that case finding the following bargaining unit to be appropriate: "[a]ll employees of the Fire Department of the City of Poplar Bluff including the positions of Hoseman, Assistant Driver, Driver, and Lieutenant, but excluding the positions of Captain, Arson Investigator, Mechanic, Assistant Chief, and Chief." *Id.* at 5. Furthermore, the Board directed that a representation election be conducted among the employees in the unit. The Union won the representation election and on June 16, 1978, was certified by the Board as the exclusive bargaining representative for the employees in the bargaining unit.

Over a period of time beginning in 1979, the Department was reorganized. The positions of Hoseman, Assistant Driver, and Driver were reclassified as Firefighters. Following reclassification the Firefighters remained in the bargaining unit. The six Lieutenants were promoted to Captain and the Lieutenant position was eliminated. Three Shift Commander positions were created and the three existing Captains were offered those positions. The position of Safety Inspector was also created. The Department now includes the following positions: one Chief, one Assistant Chief, three Shift Commanders, six Captains, eighteen Firefighters, one Safety Inspector, and one Mechanic.

As the Department was reorganized, a number of attempts were made to clarify the bargaining unit. However, for various reasons, the Board never issued a formal decision clarifying the unit. Despite the lack of a decision clarifying the bargaining unit, the Department continued to bargain and enter into agreements with the Union.

From the top down, the Department's authority hierarchy is as follows: Chief, Assistant Chief, Shift Commanders, Captains, and Firefighters. The Department has three firehouses numbered 1, 2 and 3. Firehouse 1 is the primary firehouse. Both the Chief and Assistant Chief have offices in Firehouse 1. The Chief and the Assistant Chief work seven-hour shifts. The Shift Commanders are also housed in Firehouse 1. There are no Shift Commanders at Firehouses 2 and 3. The Captains are the only officers at Firehouses 2 and 3.

Each firehouse operates three shifts of fire companies. Each shift is 24 hours long. At Firehouse 1, a fire company is composed of a Shift Commander and two Firefighters. At Firehouses 2 and 3, a fire company is composed of a Captain and two Firefighters.

At Firehouses 2 and 3, the Captains perform many of the same duties as the Shift Commanders at Firehouse 1. The Captains are the Firefighters immediate supervisors. The Captains assign work to the Firefighters and are responsible for making sure the Firefighters perform their daily duties. Each Captain is responsible for "directing and supervising the

activities of an engine, ladder or rescue company and the station activities of a fire company.” Each Captain is responsible for exercising supervision “over subordinate personnel to whom specific assignments are made and whose work is checked and processed upon completion.”

There is a daily routine for each shift which is mandated by the Department. The daily routine includes cleaning the engines, checking all equipment to ensure that it is in good working order, and cleaning the firehouses. Generally, the Captains take part in the daily routine. However, the Captains can choose not to participate in the cleaning and equipment checks. The Captains could require the Firefighters to complete the cleaning and equipment checks by themselves. In contrast, the Firefighters have no discretion as to whether or not they participate in these daily routine tasks. They must perform the tasks assigned to them by the Captains.

While on duty, the fire crews live in the firehouses. They eat, cook and sleep at the firehouses. The unofficial, unwritten rule within the Department is that the individual who cooks does not have to clean up after the meal. The other members of the fire crews will clean up after the meal. The Captains generally assist with the cooking and cleaning. Again, however, the Captains can chose not to participate in the cooking and cleaning. The Captains could require the Firefighters to perform those duties. The Firefighters have no such discretion.

Additionally, the Captains are responsible for maintaining the daily logbook and checklists. The Captains are also responsible for completing required reports and forms. Occasionally, a Firefighter may assist a Captain with completing a report or form, but this would be done just as a matter of convenience or timesaving. The Firefighters are not responsible for completing the reports and forms. The amount of time spent by Captains in completing paperwork varies. During a normal shift, a Captain will spend approximately one hour completing paperwork. However, an incident report, which must be completed for each call the fire company responds to, may take three to four hours to complete. The Department also

performs code enforcement and the Captains are responsible for issuing notices of violation. The Captains have discretion as to whether or not they issue a notice of violation. The Captains are also responsible for completing the Notice of Violation Report. Lastly, Captains assist individuals desiring to have bonfires in completing bonfire permit applications.

The Captains are also responsible for training the Firefighters under their command. Each Captain is responsible for ensuring that the Firefighters under his command complete one hour of map study per shift. Each Captain is also responsible for determining the additional training needs of the Firefighters in his company and seeing that the Firefighters receive the needed training. Furthermore, to assist a Firefighter in his or her efforts to obtain a promotion, a Captain may suggest the Firefighter study particular training material. Each Captain will record all training in the daily logbook and on the monthly training record.

The City of Poplar Bluff Police Department performs the dispatching services for the Department. When an emergency fire call comes in, the police dispatcher decides which firehouses will respond and dispatches those companies to the scene. The dispatcher bases his or her decision on the geographic location of the fire, the type of fire, and the size of the fire. For example, a structure fire is always a two-alarm fire. On a two-alarm fire, the fire company from Firehouse 1, consisting of the Shift Commander and two fire fighters, will always respond. In addition, a fire company from either Firehouse 2 or 3 will respond depending on the geographic location of the fire. The Shift Commander will be in command at the scene of a two-alarm fire. However, the Shift Commander does not generally respond to single alarm fires and a Captain will be in command at the scene of a single alarm fire. The Captain will direct the firefighting at single alarm fires. Regardless of the fire's size, the first officer on the scene will take command until a superior officer arrives on scene. Upon his arrival at the scene, the superior officer may assume command or leave the junior officer in command. Therefore, in the case of a two-alarm fire, if a Captain is the first officer on scene, he will assume command

and direct the firefighting. Upon the Shift Commander's arrival at the scene, the Shift Commander could assume command or leave the Captain in command.

The first officer on the scene will also assess the situation to determine the number of fire companies required to properly fight the fire. If the officer feels additional companies are needed, he will call for additional companies. If the officer determines that all of the responding fire companies are not needed, he can call in and have the other fire companies return to their firehouses. If a Captain is the first officer on scene, he will make this determination.

There is a standard operating procedure to be followed in fighting fires and to a certain extent the Firefighters are trained to respond automatically in fire situations. However, with certain fires, such as structure fires, the Firefighters will look to their Captains for directions. Furthermore, at the fire scene, all of the officers and Firefighters, including the Chief, will do whatever is necessary to control the fire. Therefore, the Captains will, at times, participate in the firefighting.

The Captains also participate in the hiring process. An individual desiring to be hired as a Firefighter must go to the Poplar Bluff City Hall and complete an employment application. The applicant must then pass a written examination. The written examinations are created by the Chief or Assistant Chief and are graded by someone in the Department's administrative office.

Upon successful completion of the written examination, the applicant must report to Firehouse 3 and take a physical agility test. The Assistant Chief, a Shift Commander, or a Captain will administer the physical agility test. In the alternative, all three, with each grading an assigned task, may administer the physical agility test. All tasks assigned to the applicant must be completed.

Upon completion of the physical agility test, the applicant reports to Fire House 1 to be interviewed by the Hiring Board. The Hiring Board is comprised of the Personnel Director for

the City of Poplar Bluff, the Assistant Chief, a Shift Commander, and a Captain. The Hiring Board asks each applicant a series of questions and each board member grades each answer given by the applicant. At the end of the interview, all of the grades are averaged. The Captain participating on the Hiring Board has the same amount of input as any other member of the Board.

Following the interviews, the applicant's written examination score, physical agility test score, and interview score are combined. The results are forwarded to the Hiring Board. The Hiring Board selects an applicant, and an alternate, for each available position. An alternate for each position is chosen in case the selected applicant fails the required drug test. The Hiring Board then forwards its recommendations to the Chief. The Chief telephones the selected applicants and informs them that they have been selected for the position. However, each selected applicant must first be approved by the City Manager and pass a drug test.

The Captains also evaluate the Firefighters under their command. Each Captain completes the employee evaluations for the Firefighters on his shift. The Captains must assign to each Firefighter one of the following ratings: unsatisfactory, fair, satisfactory, good, or excellent. Firefighter evaluations are generally completed once a year. However, Firefighter evaluations are also completed prior to six-month pay increases and promotions. The Chief or the Assistant Chief reviews the completed evaluations.

To be promoted to Captain, a Firefighter must have four years experience with the Department, take a written promotional test, and be interviewed by the Promotional Review Board. The Review Board, like the Hiring Board, is composed of the Personnel Director for the City of Poplar Bluff, the Assistant Chief, a Shift Commander, and a Captain. The Firefighter also can be given an employee evaluation prior to any promotion. As noted previously, each Captain is responsible for evaluating the Firefighters in his company.

With regard to the disciplining of the Firefighters, Captains may issue verbal and written reprimands. However, Captains cannot suspend or discharge Firefighters. Shift Commanders may suspend Firefighters. With regard to the discharging personnel, no individual has been discharged from the Department in approximately twenty years.

There is approximately a \$6000 differential between the annual salary of Firefighters and the annual salary of Captains. The pay scales are such that a Firefighter will never make more than a Captain. A Firefighter's starting salary is \$23,580. New Firefighters receive pay increases at six-month intervals and top out at two years. The top Firefighter salary is \$28,860. In comparison, a Captain's starting salary is \$29,916. Captains top out at one year. The top Captain salary is \$34,584. The starting salary for a Shift Commander is \$34,644 and a Shift Commander's top salary is \$37,044. Once an individual reaches the top of his or her pay scale, the individual will receive only the yearly pay increases negotiated between the Department and the Union.

The Department is required under the Fair Labor Standards Act to pay the Firefighters overtime. In call back situations, the Firefighters are paid time and a half with a two-hour minimum. The Department is not required under the Fair Labor Standards Act to pay the Captains overtime. However, as an incentive for the Captains to be available in call back situations, the Department pays the Captains a two-hour minimum at their hourly wage rate in call back situations. In emergency situations, the shift just coming off duty will be called back. That shift is called back because they will have an additional day to rest. In non-emergency situations, the Department may either call back the shift coming off duty or call back by seniority. In non-emergency situations, the Department will call back the personnel that they can contact.

Sick leave is provided for by City ordinance. If a Firefighter is sick and is unavailable for his or her shift, the Firefighter is required to call the Shift Commander on the shift that will be



coming off duty. The Firefighter is required to call the Shift Commander between 5:30 and 6:30. This will give the officers sufficient time to reorganize their personnel to ensure all firehouses are covered.

### **CONCLUSIONS OF LAW**

This matter arises from the filing by the Union of a petition for clarification of a bargaining unit established by a previous decision of the State Board of Mediation. In *International Association of Fire Fighters, Local No. 2543 v. City of Poplar Bluff, Missouri*, Case No. 77-001 (SBM 1978) the Board found the following bargaining unit to be appropriate: “[a]ll employees of the Fire Department of the City of Poplar Bluff including the positions of Hoseman, Assistant Driver, Driver, and Lieutenant, but excluding the positions of Captain, Arson Investigator, Mechanic, Assistant Chief, and Chief.” The Union won the subsequent representation election, and on June 16, 1978, the Union was certified by the Board as the exclusive bargaining representative for the employees in the unit.

At the hearing on this matter, evidence was presented which clearly showed that, subsequent to the Union’s original certification in 1978, the Department underwent substantial reorganization. The positions of Hoseman, Assistant Driver, and Driver were reclassified as Firefighters. The six Lieutenants were promoted to Captain and the Lieutenant position was eliminated. New Shift Commander positions were created and the existing Captains were offered those positions. The position of Safety Inspector was also created. The Department now includes the following positions: one Chief, one Assistant Chief, three Shift Commanders, six Captains, eighteen Fire Fighters, one Safety Inspector, and one Mechanic.

During the hearing, the Union orally amended its petition to reflect the fact that it was no longer seeking to represent the Shift Commanders. In addition, at the close of the evidence, the Union moved to further amend its petition to clarify the bargaining unit to read “all fire fighters and Captains, excluding Shift Commanders, Assistant Chief and the Chief.” The City

conceded the need for some clarification of the bargaining unit, but continued to object to the inclusion of the Captains.

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units. Section 105.525, RSMo. 1994. Clarifying a bargaining unit, which has previously been determined to be appropriate, is one facet of the general issue of the appropriateness of a bargaining unit. See, *Department of Corrections and Human Resources v. Missouri State Council 72, AFSCME*, Case No. UC 89-003, at 12 (SBM 1989). It is an aspect of the Board's authority to police its certifications. Compare, *Libbey-Owens-Ford Glass Company*, 169 NLRB 126, 127 n.14 (1968)(The NLRB noted that it had authority to clarify an existing certified unit on its own motion as part of its authority to police its certifications).

Following the Department's reorganization, it continued to negotiate and enter into contracts with the Union. However, given the extensive nature of the reorganization and reclassification of personnel, the Department, at the hearing, questioned the existence of the certified bargaining unit. Therefore, the Board takes this opportunity to clearly state that once the Board has certified a bargaining unit, that unit will continue to exist until decertified by the Board. Furthermore, an employer may not unilaterally alter the composition of that bargaining unit. *International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 1107 v. Parkway School District*, Case No. UC 98-039, at 11 (SBM 1998). An employer may not remove unit classifications under the guise of promoting otherwise bargaining unit employees to new, out-of-unit, supervisory positions. *Id.* 'To do so would not only modify the job functions of various bargaining unit members but also affect their right to representation.' *Id.* However, this case clearly presents substantially changed circumstances which warrant a review and clarification of the entire bargaining unit. Compare, *City of Poplar Bluff v. International Union of Operating Engineers, Local 2, AFL-CIO*, Case No. UC 90-030, at 10 (SBM 1990)(In denying clarification of the existing bargaining units, the Board noted there had

not been any changes in the Utility Department's overall structure which would warrant changing the units). Therefore, the Board will undertake the task of clarifying the entire bargaining unit.

First, the positions of Chief, Assistant Chief, Safety Inspector, and Mechanic have never been included in the certified bargaining unit and the Union is not seeking to represent those positions. Therefore, the positions of Chief, Assistant Chief, Safety Inspector, and Mechanic are not at issue in this matter.

As for the Firefighters, there does not appear to be any dispute between the parties. The positions of Hoseman, Assistant Driver, and Driver were reclassified as Firefighters. Following this reclassification, the Firefighters remained in the bargaining unit. This appears to be entirely appropriate. Therefore, the Board specifically holds that the Firefighters shall remain in the certified bargaining unit.

The Board next turns to the issue of the Shift Commanders. In its original unit clarification petition, the Union sought to include the Shift Commanders in the bargaining unit. However, the City opposed the inclusion of the Shift Commanders on the grounds that they were supervisory personnel. At the hearing, the Union orally amended its petition to reflect that it was no longer seeking to represent the Shift Commanders. Based on the Union's amendment of its petition, it appears the parties now agree that the Shift Commanders should be excluded from the bargaining unit. Therefore, the Board holds that the Shift Commanders are excluded from the certified bargaining unit.

The final issue before the Board is that of the Captains. In its original decision in 1978, the Board included Lieutenants in the bargaining unit and excluded Captains from the bargaining unit. At the time of that decision, the City had six Lieutenants, and three Captains. However, during the reorganization, three Shift Commander positions were created and the three existing Captains were offered those positions. The six Lieutenants were promoted to

Captain and the Lieutenant position was eliminated. As we stated previously, an employer may not remove bargaining unit classifications under the guise of promoting otherwise bargaining unit employees to new, out-of-unit, supervisory positions. *International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Local 1107 v. Parkway School District*, Case No. UC 98-039, at 11 (SBM 1998). Furthermore, “[w]here the duties of the newly-designated out-of-unit employees are substantially similar to those of the unit employees, the transfer may be a sham....” *Id.* “[T]he job duties of the employees involved, and not their job titles, are determinative of whether the positions are bargaining unit positions.” *Id.* See also, *International Association of Fire Fighters, Local 3228 v. City of Gladstone*, Case No. R 89-023 (SBM 1990).

The District maintains that the job duties of the Captains are supervisory in nature and should therefore, be excluded from the bargaining unit. A review of the evidence in this case demonstrates that the Captains are supervisors and should be excluded from the bargaining unit.

An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a “clear and identifiable community of interest.” However, this Board and the courts have consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. *International Association of Firefighters, Local 2665 v. City of Kirkwood*, Case No. R 89-024 (SBM 1989); *MNEA Springfield Education Support Personnel v. Springfield R-12 School District*, Case No. UC 88-021 (SBM 1988); and *St. Louis Fire Fighters Association, Local 73 v. City of St. Louis*, Case No. 76-013 (SBM 1976). See also, *Golden Valley Memorial Hospital v. Missouri State Board of Mediation*, 559 S.W.2d 581 (Mo.App.

1977). The rationale for this exclusion is that supervisors do not have a community of interest with, and therefore are not appropriately included in a bargaining unit comprised of, the employees they supervise.

This Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar, and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.<sup>1</sup>

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. Moreover, no one factor is determinative. Instead, the inquiry in each case is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.<sup>2</sup>

Based upon the evidence adduced at the hearing, it is clear that the Captains are supervisors and therefore, should be excluded from the bargaining unit. The evidence demonstrates that the Captains have the authority to effectively recommend several of the procedures listed in the first factor, mainly hiring, promotion and discipline of employees. As far as hiring is concerned, the Captains assist in administering and grading the physical agility test. The Captains sit on the Hiring Boards and have equal input in the Board's recommendations.

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<sup>1</sup> See, for example, *City of Sikeston*, Case No. R 87-012 (SBM 1987).

<sup>2</sup> See, for example, *Monroe County Nursing Home District, dba Monroe Manor*, Case No. R 91-016 (SBM 1991).

The Captains serve on the Promotional Review Boards. They are also responsible for evaluating the Firefighters in their respective fire companies prior to any promotion. The Captains will also assist Firefighters in obtaining promotions by suggesting training material for the Firefighters to study. In addition, Captains can discipline Firefighters by issuing verbal and written reprimands. However, Captains cannot suspend or discharge Firefighters. It should be noted that since no employee of the Department has been discharged for approximately twenty years, the Captains' lack of authority to discharge Firefighters is of little weight. Based upon the foregoing, the Captains can effectively recommend the hiring, promotion and discipline of employees. Factor one is met in this case.

The Captains also have the authority to direct and assign the workforce. The Captains are the only officers present in Firehouses 2 and 3. They assign the daily tasks to the Firefighters and the Firefighters must comply. The Captains are responsible to see that all of the Firefighters' daily duties are completed. While it is true that the Captains generally participate in the daily routine, they have authority to decline to participate in the daily routine. The Firefighters have no such discretion. The Captains also exercise their independent judgment in determining the training needs of the Firefighters in their respective fire companies.

The Captains are also in command at the scene of one-alarm fires and they direct the firefighting. In addition, if a Captain is the first officer on the scene of a larger fire, the Captain will take command and direct the firefighting until a superior officer arrives. Even after a superior officer arrives, the superior officer can leave the Captain in command of the fire scene. Furthermore, if a Captain is the first officer on the scene of a fire, the Captain must exercise his independent judgment in determining the appropriate number of fire companies required to properly fight the fire. The Captain may request additional companies or tell the other responding companies to return to the firehouse. Given that the Captains are the only officers present at Firehouses 2 and 3 and at one-alarm fires, the Captains must, out of necessity,

exercise their independent judgment and discretion in assigning and directing the Firefighters. Therefore, the Captains have the authority to exercise their independent judgment and discretion in directing and assigning the workforce. The second factor is met in this case.

On any given shift, only six Firefighters will be on duty, two at each firehouse. Therefore, the Captains at Firehouses 2 and 3 will be responsible for the same number of Firefighters as the Shift Commander at Firehouse 1. Given that there are no Shift Commanders at Firehouses 2 and 3, the Captains at those firehouses exercise the greatest amount of authority in directing and assigning tasks to those Firefighters. The Captains also evaluate the Firefighters at Firehouses 2 and 3. The Captains may discipline the Firefighters by issuing verbal or written reprimands. Furthermore, the Captains may be responsible for directing more than two Firefighters at the scene of a fire. Thus the third factor also indicates that the Captains are supervisors.

With respect to fourth factor, the level of pay for Captains is considerably higher than that for Firefighters and is closer to the pay scale of Shift Commanders. The highest paid Firefighter could never make more than the lowest paid Captain. Furthermore, the Captains are not paid overtime. The Firefighters are paid overtime. It is true that Captains, as an incentive to be available for call back, receive two hours pay in addition to their regular salaries in call back situations. In contrast, the Firefighters receive time and a half, with a two-hour minimum, in call back situations. It is clear that in terms of pay, Captains are treated as management both with respect with the level of pay they receive and the lack of FLSA overtime pay. This factor also indicates that the Captains are supervisors.

As for the fifth factor, it is clear that the Captains primarily supervise the Firefighters assigned to them. While at times a situation may dictate the Captains participate in an activity, such as fighting fires, the Captains' primary role is to supervise the Firefighters under their command. Each Captain is responsible for "directing and supervising the activities of an

engine, ladder or rescue company and the station activities of a fire company.” Each Captain is also responsible for exercising supervision “over subordinate personnel to whom specific assignments are made and whose work is checked and processed upon completion.”

With regard to the sixth factor, it is true that the Captains engage in daily work activities along with the Firefighters, but the Captains have the authority and discretion to not participate in these activities. The Captains also perform many of the same duties as the Shift Commanders. The Captains assign tasks to the Firefighters and they are responsible for seeing that the Firefighters complete the assigned task. The Captains are in command at one-alarm fires and direct the firefighting. In sum, a substantial portion of the Captains’ time is spent supervising the Firefighters under their command and completing the daily logbook, checklists, reports and forms related to those activities. Finally, whenever the situation dictates the Captains do take part in fighting fires. However, all of the officers and Firefighters within the Department, from the Chief on down, participate in fighting fires whenever the situation dictates. As the Chief explained, “if I saw someone needed some help pulling some hose, I’m certainly going to help them pull a hose.” (Tr. 42). The above clearly indicates that the Captains spend a substantial portion of their time supervising the Firefighters.

In view of the foregoing, we conclude that the Captains are true supervisors.

As further support for our decision, we note that this case is substantially similar to two prior cases decided by this Board: *International Association of Firefighters, Local 2665 vs. City of Kirkwood*, Public Case No. R 89-024 (1989), and *Professional Firefighters of St. Louis County, Local 2665 IAFF vs. Eureka Fire Protection District*, Public Case No. R 89-018 (1989). In *International Association of Firefighters, Local 2665 vs. City of Kirkwood*, the Board found that captains should be excluded from the bargaining unit. The captains in the Kirkwood Fire Department had the authority to recommend hiring, promotion, and discipline of the employees. The captains could discipline their companies, as they deemed appropriate. They directed the



firefighters assigned to their companies, both at the engine house and at the fire scene, even though the firefighters required little direct supervision. The captains were also the highest-ranking members of the department at stations two and three. Finally, the Captains earned more than the firefighters and they spent a substantial portion of their time supervising employees rather than simply acting as working foreman.

Similarly, in *Professional Firefighters of St. Louis County, Local 2665 IAFF vs. Eureka Fire Protection District*, the Board found that the captains were not an appropriate part of the bargaining unit. The Board found that the captains and firefighters both lived at their assigned firehouses and that the captains shared household chores with their subordinates. However, the captains provided day-to-day direction to the firefighters on their shifts and were responsible to see that routine duties were completed. The captains also determined who performed particular duties. At a fire scene, the captains were in command until a superior officer arrived. Captains earned \$800 to \$1000 more per year than the firefighters. The Captains were part of the hiring committee that hired new firefighters. Additionally, Captains were involved in the discipline of firefighters.

The similarities between those two cases and this case could not be more apparent. Therefore, we will follow the *City of Kirkwood* case and the *Eureka Fire Protection District* case in the present case.

Therefore, the Board holds that the Captains are supervisors and should be excluded from the certified bargaining unit.

### **ORDER**

The State Board of Mediation finds that the Captains are supervisors. The Board further finds that the bargaining unit found appropriate in *International Association of Fire Fighters, Local No. 2543 v. City of Poplar Bluff, Missouri*, Case No. 77-001 (SBM 1978) and certified by the Board on June 16, 1978, as follows: "all employees of the Fire Department of the City of

Poplar Bluff including the positions of Hoseman, Assistant Driver, Driver, and Lieutenant, but excluding the positions of Captain, Arson Investigator, Mechanic, Assistant Chief, and Chief", should now be clarified to read: "all Firefighters, but excluding Captains, Shift Commanders, Safety Inspector, Mechanic, Assistant Chief, and Chief."

Signed this 5<sup>th</sup> day of May, 2000.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John A. Birch  
John A. Birch, Chairman

/s/ Patrick Hickey  
Patrick Hickey, Employee Member

/s/ Lois VanderWaerd  
Lois VanderWaerd, Employer Member

## **Dissenting in part**

I dissent from that portion of the majority opinion holding that the Captains are supervisors. Based upon my review of the record, briefs, and applicable law, I am of the opinion that the Captains are lead workers.

As the majority correctly notes, this Board has traditionally used the following indicia to determine supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters;
3. The number of employees supervised and the number of other persons exercising greater, similar and lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
5. Whether the person is primarily supervising an activity or primarily supervising employees; and
6. Whether the person is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees.

However, contrary to the holding of the majority, I do not think these factors are present in sufficient combination and degree to warrant the conclusion that the Captains are supervisors. In fact, I do not think the Captains meet a single one of these factors.

As for the first factor, the Captains cannot hire, promote, transfer or discharge Fire Fighters. With regard to disciplining the Firefighters, the Captains can only issue verbal and written reprimands. Captains cannot suspend Firefighters. The Captains do not satisfy the first factor.

In my opinion, the Captains also exercise very little independent judgment and discretion in directing and assigning task to the Firefighters. The Department has a daily routine which must be followed by Department personnel. All paperwork and record keeping performed by

the Captains is required by the Department, City, or State. Further, Chief Hastings testified that there was even a standard operating procedure for fighting fires. Additionally, the Firefighters are so well trained that they react automatically at fire scenes. Therefore, I do not think the Captains meet the second factor.

Further, the Captains do not meet the third factor. Each Captain supervises only two Firefighters. In contrast, each Shift Commander supervises all officers and Firefighters on the shift, while the Chief and Assistant Chief supervise all Fire Department personnel.

The pay differential between Captains and Firefighters is comparable to the pay differential between lead workers and ordinary workers. It appears that Captains are paid more for their skills as firefighters than for their supervision of the Firefighters. In addition, Captains are paid additional amounts in call back situations. This is similar to the additional pay received by Firefighters in call back situations. Therefore, I do not think the Captains meet the fourth factor.

It further appears to me that the Captains supervise activities, not personnel. The Captains are responsible for seeing that the daily routine, mandated by the Department, is completed. Most of these duties entail cooking, cleaning the station and equipment, map study, and checking equipment to ensure it is in working order. These activities can be completed by the Firefighters with little or no supervision on the part of the Captains. Even at fire scenes, the Firefighters require little direction or supervision. The Firefighters are well trained and each Firefighter knows his or her job. They react automatically at fire scenes with little direction by the Captains. Therefore, I do not think the Captains satisfy the fifth factor.

As for the sixth factor, the Captains spend a substantial portion of their time working alongside the Firefighters. The Captains participate in the daily routine. They cook, clean, wash dishes, check the equipment, and participate in map study, in the same fashion as the

Firefighters. In addition, the Captains fight fires alongside the Firefighters. The Captains do not meet the sixth factor.

Based upon my review of the indicia of supervisory status, the Captains are not supervisors. Instead, they should properly be characterized as lead workers.

Finally, I think the two cases relied upon by the majority, *International Association of Firefighters, Local 2665 v. City of Kirkwood*, Case No. R 89-024 (SBM 1989) and *Professional Firefighters of St. Louis County, Local 2665 IAFF v. Eureka Fire Protection District*, Case No. R 89-018 (SBM 1989), were incorrectly decided. I would not compound those errors by following those cases in this matter.

Based upon the foregoing, I would hold that the Captains are not supervisors and I would include the Captains in the certified bargaining unit.

/s/ Patrick Hickey  
Patrick Hickey, Employee Member